In the High Court of Punjab and Haryana, Chandigarh.

Civil Revision No. 6861 of 2006

Date of Decision: 13.11.2007

Gagandeep Singh

…Petitioner

Versus

Gurdev Singh

…Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Amit Jain, Advocate
for the petitioner.

Mr. Sumeet Mahajan, Senior Advocate
with Mr. Amandeep Singh, Advocate
for respondent.

RAJESH BINDAL, J.

The tenant is before this Court challenging the order dated February 23, 2006 passed by learned Rent Controller, Ludhiana and order dated October 31, 2006 passed by learned Appellate Authority, Ludhiana, whereby his eviction has been ordered.

Briefly the facts, as noticed by the learned authorities below, are that the respondent/landlord filed a petition for eviction of the petitioner/tenant from one shop forming portion of building bearing No.B-XVI-1177 (Old) B-XVI 2171 (New) Mohalla Deep Nagar, Gill Road, Ludhiana, on the ground of non-payment of rent, change of user and requirement of the landlord of the premises in dispute for his own use & occupation. The premises in dispute was let out to the tenant at the rent of Rs. 150/- per month on November 1,

1970 and continuous as such. The property in dispute was owned by five co-sharers after the death of original owner Rattan Singh. The co-owners being his widow and two sons and daughter each. The landlord after retiring as teacher from the Government High School, wanted to start his own business in the demised premises by opening shop for stationery articles. Though learned Rent Controller framed as many as eight issues, however, the arguments of learned counsel for the petitioner/tenant before this Court are confined on two issues, namely the change of user and the personal necessity of the landlord.

As far as issue of change of user is concerned, it is submitted that there is no recital in the rent note to the effect that the tenant is debarred from using the demised premises for any other business except for the purpose it was let out. Mere change of business by the tenant will not give cause of action to the landlord to get his eviction on the ground of change of user. In the present case, the shop in dispute was let out for carrying on the business of cloth merchant where the petitioner/tenant has now opened a Juice shop, which cannot be termed as change of user.

As far as the issue of personal necessity is concerned, it was submitted that during pendency of the present proceedings, the landlord got evicted a tenant from another shop which fact was not disclosed and the same being in possession of the landlord, the eviction from the demises premises could not be ordered.

On the other hand, learned senior counsel appearing for the respondent/landlord could not successfully dispute the proposition of law regarding change of user. It has been consistently held by Hon'ble the Supreme Court that unless there is prohibitory clause in the rent note, no ground for change of user could be raised. The following judgments can very well be referred for the purpose:-

a) ***Mohan Lal v. Jai Bhagwan (1988-1) 93 PLR 670 (SC);***

b) ***Hari Rao v. N. Govindachari and Others 2005(2) Rent Control Reporter 344 (SC);*** AND

c) ***Sham Lal Gupta v. Kulwinder Singh 2003***

(2) Rent Control Reporter 383.

As far as issue regarding personal necessity is concerned, it was submitted that the landlord being a retired teacher required the shop in dispute to carry on the business of opening a stationery shop. No special experience or expertise are required for the same as the landlord was already in teaching profession. As far as the plea of another shop having been vacated during the pendency of the present proceedings is concerned, it was submitted that the same was vacated in petition filed by another co-sharer in the property and the same was for their personal necessity and was admittedly in possession of the co-owner and has not been let out to anyone else. Still further it was submitted that there being concurrent findings by both the learned Courts below on the issue of personal necessity and there being no error of jurisdiction, this Court should not interfere in the eviction order passed against the petitioner/tenant on the ground of personal necessity.

Having heard learned counsel for the parties, I am of the view that as far as the issue of change of user is concerned, the petitioner/tenant certainly has a point. The enunciation of law on this issue clearly supports the case of the petitioner/tenant. Perusal of the rent note Ex.P1 does not show that there is any clause to restrict the use of the demised premises to a particular trade. Once that is not there, no ground of change of user could possibly be raised by the respondent/landlord.

As far as issue of personal necessity is concerned, from the pleadings of the parties, I find that sufficient material is available on the record to hold that the need of respondent/landlord for requirement of premises in dispute for his personal use and occupation is genuine and bonafide. The respondent/landlord retired as a school teacher and wanted to open his stationery shop, which is in line with the teaching profession. As far as vacation of another shop during the pendency of present litigation is concerned, it had been specifically stated by the respondent/landlord that he was not in possession of any other shop or property and in fact while dealing with the issue regarding availability of another shop, learned Appellate Authority opined as under:-

> “There is no dispute that landlord was working as Science Teacher and retired on 30.11.2003. He wanted to start business of stationery in the shop in

question. Business of stationery does not require much expenses. Moreover, he retired as Teacher and has dealt thousands of students who require stationery at different level, so, it cannot be said that landlord could not start the business of stationery in the shop in question. The objection raised by the appellant is that one shop shown red in the enclosed site plan Ex.RW10/A is lying vacant and petitioner can start business in the said shop. Another shop in the same building was got vacated during the pendency of the case. Petitioner could start the business in the said shop. In the cross-examination respondent as RW1 stated that Kuldip Singh was carrying on business of watches in the shop shown as red in the site plan. Since Kuldip Singh is co-owner in the premises in question and said shop is not in possession of the petitioner but is in possession of the co-owner so, I am of the view that petitioner is not proved to be in possession of the said shop. Petitioner admitted in the cross-examination that Gurdev Kaur co-owner had filed a petition for ejectment against M/s Kalra Hardware Store and vacant possession of the said shop was handed over to Gurdev Kaur. Since said shop is now possessed by Gurdev Kaur and not by the petitioner, so, I am of the view that the ld. Trial Court has rightly held that it is not proved that petitioner is not in possession of any building where he can start the business. Since the petitioner is not occupying any premises in urban area Ludhiana where he can start the business of stationery, so, I am of the view that ld. Trial Court has rightly held that the demised premises is required by the petitioner bonafidely for starting his business. Authorities relied upon the ld. Counsel for the appellant are distinguishable on facts and ratio of said authorities cannot be relied upon the facts of the present case. There is no illegality in the finding recorded by the ld. Trial Court on issue No.4".

Once both the learned Courts below have concurrently found that there was no shop lying vacant at the time of filing of petition by the respondent/landlord as was even admitted by the petitioner/tenant in his cross-examination that the alleged vacant shop was infact in possession of Kuldeep Singh one of the co-owners and the other shop which was vacated during the pendency of the present proceedings was on a petition filed by another co-owner Gurdev Kaur for her own use and occupation and after vacation thereof was in her possession.

In view of my above discussions, once it is found that the shop in dispute is required by the respondent/landlord for his personal use and occupation, in my opinion no illegality has been caused by the authorities below in ordering eviction of the petitioner/tenant from the shop in dispute.

Accordingly, the present petition is dismissed.

(Rajesh Bindal)
Judge

November 13, 2007
"DK"